

PROFESSIONAL SERVICES CONTRACT
[Molina Information Systems, LLC– Department of Human Services]

This Professional Services Contract (the "Agreement") made as of the 1st day of September 2016 in the Territory of the United States Virgin Islands, by and between the **Government of the Virgin Islands, Department of Property and Procurement**, on behalf of the **DEPARTMENT OF HUMAN SERVICES** 1303 Hospital Ground, Knud Hansen Complex, Building A, St. Thomas, U.S. Virgin Islands 00802, (hereinafter referred to collectively as "Government") and **MOLINA INFORMATION SYSTEMS, LLC. d/b/a MOLINA MEDICAID SOLUTIONS**, a Delaware limited liability company, 200 Oceangate Suite 100, Long Beach, California 90802 (hereinafter referred to as "Contractor").

Both parties witness to being duly authorized to execute this Agreement and will attest accordingly when and where necessary.

WITNESSETH

WHEREAS, the Government is in need of the ongoing services of the Contractor to provide claims processing and management services to the Government under the Original Agreement since October 5, 2012 utilizing the MMIS System of the State of West Virginia's Department of Health and Human Resources ("DHHR");

WHEREAS, the Government desires to continue to receive claims processing and management services from Contractor for a period that is coterminous with West Virginia's Medicaid Program;

WHEREAS, the Government is entering into this Agreement on a sole source basis to retain the services of Contractor;

Now therefore, in consideration of their mutual covenants, and intending to be legally bound by this written instrument, the Government and Contractor agree to the following:

TERMS AND CONDITIONS

1. TERM

This Agreement shall be effective from September 1, 2016 and shall terminate on December 31, 2022. Subject to an equitable increase in the not-to-exceed amount set forth in Section 3, the Government may, at its sole option, extend the Agreement for two (2) additional one-year periods (thereafter the "Renewal Term") by giving written notice to the Contractor of such extension not less than ninety (90) days prior to the expiration of the Initial Term (hereinafter "Renewal Term") or Renewal Term, at the rate indicated in

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Contractor's Initials: Norman Nichols

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the Terms of Compensation herein and/or any adjustments agreed to in writing by the parties.

2. SERVICES

The Government acknowledges that the services provided by Contractor are to be provided on systems owned or controlled by the State of West Virginia, U.S.A. (the "Host"), and that to the extent that there is a conflict between the Host and the Government regarding any aspect of the Services, Contractor is obligated to follow the directions of the Host.

The Government agrees to have its project management and Medicaid team meet regularly (at least quarterly) with the Host for purposes of managing the Services and resolving disagreements between Government and Host. Government shall cause its project manager and at least two additional personnel familiar with the project to attend project meetings. Contractor shall assist in facilitating such meetings and Contractor's project manager shall attend. Government agrees to involve qualified personnel in such meetings and acknowledges that its failure to participate in such meetings may have adverse effect on the Services provided by Contractor.

The Contractor will provide the services described in *Addendum I (Scope of Services)* attached hereto and made part of the Contract. The licenses necessary for the provision of the Services are in detailed in *Addendum IV (License and Maintenance)*

3. COMPENSATION

Government, during the term of this contract and addendum in consideration of the satisfactory performance of the services described in *Addendum I (Scope of Services)*, agrees to pay Contractor an amount not to exceed **TWENTY-SIX MILLION FORTY-SIX THOUSAND SIX HUNDRED NINE and 00/100 DOLLARS (\$26,046,609.00)** in accordance with the provisions outlined in *Addendum II (Compensation)* which is attached hereto and made part of this Contract.

4. GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the United States Virgin Islands.

5. RECORDS, DOCUMENTS, PRINTOUTS, ETC.

(a) The Contractor, when applicable, will present monthly invoices documented, precise records of time and/or money expended under this Agreement. The Contractor shall preserve all books and records directly related to the services provided under this Agreement for at least five (5) years from date of each invoice.

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(b) Subject to Section 5(d), all documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom specifically and exclusively prepared for the Government by Contractor pursuant to this Agreement shall become the property of the Government and shall be turned over to it at the termination of this Agreement ("Work"). The above-described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

(c) This Agreement is subject to, and incorporates by reference, 45 CFR 75.322 governing rights to intangible property. Intangible property includes but is not limited to: computer software; patents, inventions, formulae, processes, designs, patterns, trade secrets, or know-how; copyrights and literary, musical, or artistic compositions; trademarks, trade names, or brand names; franchises, licenses, or contracts; methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data; and other similar items provided that such items are subject to 90% Federal matching funds (collectively, the "FFP IP"). The Contractor may copyright any work that is subject to copyright and was developed, or for which ownership was purchased under this Agreement. The Contractor must deliver all FFP IP, including but not limited to intellectual property, to the Government in a manner that ensures the CMS obtains a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. The Contractor is further subject to applicable regulations governing patents and inventions, including those issued by the U.S. Department of Commerce at 37 CFR Part 401.

(d) Notwithstanding the foregoing or anything to the contrary set forth herein, Contractor will retain all copyright, patent and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience owned or possessed by Contractor before the commencement of, or developed or acquired by Contractor during or after, the performance of the Scope of Services and the foregoing shall not be deemed Work and Contractor shall not be restricted in any way with respect thereto.

(e) In performance of this Agreement, the Contractor acknowledges that certain government data to which the Contractor may have access may contain individual Federal tax information, personal protected health information and other individually identifiable information protected by territorial or Federal law ("Government Data"). In addition to the provisions of this Section, the Contractor shall execute the HIPAA Business Associate Agreement incorporated into this Agreement and attached as *Addendum III (Business Associate Agreement)*.

(f) Before receiving or controlling Government Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain Government Data from internal and external security threats and Government Data from unauthorized disclosure. No Government Data will be stored, accessed from, or transferred to any location outside the United States. For these purposes, the term "United States" includes the territory of the U.S. Virgin Islands.

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(g) The Contractor represents and warrants that, before receiving or controlling Government Data, it will have implemented and it shall maintain during the Term industry-standard administrative, technical, and physical safeguards reasonably designed to (i) maintain the security and confidentiality of Government Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the Government Data; and (iii) protect against unauthorized access to or use of Government Data. Such measures include, as applicable: (1) access controls on information systems, including controls to authenticate and permit access to Government Data only to authorized individuals and controls to prevent the Contractor employees from providing Government Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic Government Data while in transit from the Contractor networks to external networks; (4) industry-standard measures to store in a secure fashion all Government Data; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to Government Data; (6) industry-standard measures to ensure that the Government Data shall not be altered or corrupted without the prior written consent of the Government; (7) industry-standard measures to protect against destruction, loss or damage of Government Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis. Notwithstanding anything in this paragraph to the contrary, Contractor's compliance with corresponding West Virginia requirements shall be deemed to meet the Contractor's obligations set forth in this paragraph.

6. PROFESSIONAL STANDARDS

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands. The personnel the Contractor assigns to perform the services shall be properly trained and qualified for services they are to perform. No costs or expenses of the Contractor associated with replacement or training of personnel shall be passed to the Government. Any unavailability of the Contractor personnel, discontinuity in the Contractor's project team or other Contractor personnel-related cause will not excuse the Contractor's failure to perform as specified in this Agreement. The Contractor agrees that personnel identified as staff in **Addendum I** shall participate in the delivery of the services in the capacity indicated and the Contractor shall use commercially reasonable efforts to ensure that each of the Key Personnel stays assigned to the performance of the services until completed and that other assignments will not impair the ability of any Key Personnel to perform such services.

Each party shall assign qualified project managers to act as primary interface in managing the project. Each project manager shall have sufficient authority to authorize changes to the projects.

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The Contractor will obtain a written confidentiality agreement from each subcontractor (if any) engaged to perform services under the Scope of Services before that subcontractor provides service. No subcontracting will release the Contractor from its responsibility for its obligations under this Agreement. The Contractor will be responsible for the work and activities of each of its subcontractors, including compliance with the terms of this Agreement and for all payments to its subcontractors.

7. LICENSURE AND PERMITS

The Contractor covenants that it has familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations, and has obtained all of the applicable licenses or permits, temporary or otherwise, as may be required under said statute(s) for the conduct of the Contractor's business in the United States Virgin Islands.

The Contractor shall use commercially reasonable efforts to ensure that the Services are at all times in compliance with applicable federal and territorial regulations. To the extent such regulations change, Contractor shall provide a written change order to the Government, with applicable fees, and shall commence such work only after the Government's approval. The Government acknowledges and understands that delays in the Government's response may lead to out of compliance situation that the Contractor shall not be liable for. To the extent that the Government receives a fine assessment from a federal regulator based upon errors or omissions caused by Contractor (except those caused by the Government's approval delays), such fine assessments shall be the responsibility of Contractor.

8. LIABILITY OF OTHERS

Nothing in this Agreement shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

In no event shall either party be liable to the other party for indirect, incidental or consequential damages, unless such damages were caused by the gross negligence or willful misconduct of the liable party.

9. ASSIGNMENT

The Contractor shall not subcontract or assign any part of the services under this Agreement without the prior written consent of the Government, which consent shall not be unreasonably withheld.

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10. INDEMNIFICATION

Each party agrees to indemnify, defend and hold harmless the other party from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including reasonable attorney's fees) and causes of action of whatsoever character which such other party may incur, sustain or be subjected to, directly arising out of an act or omission constituting gross negligence or willful misconduct of indemnifying party in its performance under this Agreement, except to the extent of the negligence or wrongful act of the indemnified party.

11. INSURANCE AND LIMITATION OF CONTRACTOR'S LIABILITY

EXCEPT AS EXPRESSLY PROVIDED IN OTHER SECTIONS OF THIS AGREEMENT, CONTRACTOR MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES, DELIVERABLES OR INTELLECTUAL PROPERTY OR THEIR CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE BY THE GOVERNMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CONTRACTOR SHALL NOT BE LIABLE FOR ANY: (i) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO THE BREACH OF THIS AGREEMENT OR THE OPERATION OR USE OF THE SYSTEM OR ANY SERVICES RENDERED BY CONTRACTOR, INCLUDING SUCH DAMAGES, WITHOUT LIMITATION, AS DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, AND CLAIMS AGAINST THE GOVERNMENT BY ANY THIRD PERSON, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (ii) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY CONTRACTOR TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND ITS REASONABLE CONTROL. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE AGGREGATE LIABILITY OF CONTRACTOR, ITS AFFILIATES AND ANY OFFICER, DIRECTOR OR EMPLOYEE OF CONTRACTOR AND ITS AFFILIATES ("CONTRACTOR PARTIES") UNDER THIS AGREEMENT TO GOVERNMENT AND ANY OFFICIAL, OFFICER, DIRECTOR OR EMPLOYEE OF GOVERNMENT FOR ANY AND ALL LOSSES ARISING OUT OF OR RELATING TO THE PROVISION OF ANY SERVICES UNDER THIS AGREEMENT BY ANY OF THE CONTRACTOR PARTIES, WHETHER UNDER CONTRACT LAW, TORT LAW OR OTHERWISE, SHALL NOT BE GREATER THAN ONE AND A HALF TIMES THE COMPENSATION FOR THE SERVICES GIVING RISE TO SUCH LOSS. CONTRACTOR SHALL HAVE NO LIABILITY FOR THE ACTS OR OMISSIONS OF ANY THIRD PARTY (OTHER THAN ITS SUBCONTRACTORS). For purposes of this Agreement "Loss" means damages, claims, liabilities, losses, awards, judgments, penalties, third party claims, interest, costs and expenses, including reasonable attorneys' fees, whether arising under any legal theory including, but not limited to claims sounding in tort (such as for negligence, misrepresentation or otherwise), contract (whether express or implied), by

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statute, or otherwise, claims seeking any kind of damages and claims seeking to apply any standard of liability such as negligence, statutory violation or otherwise. For the avoidance of doubt, multiple claims arising out of or based upon the same act, error or omission, or series of continuous, interrelated or repeated acts, errors or omissions shall be considered a single Loss.

Contractor shall include the Government of the United States Virgin Islands and its officers and employees as an additional insured under the Commercial General Liability (CGL) with respect to its vicarious liability arising from Contractor's provision of services pursuant to this Agreement. Contractor is responsible for any and all deductibles stated in the policies. Insurance will be maintained at all times during the performance of the Agreement. Insurance coverage, except professional liability, will be issued by insurance companies authorized by applicable law to conduct business in the territory of the United States Virgin Islands. The professional liability insurer provides first party coverage for Contractor at its place of domicile and it is licensed by the State of California, and Contractor shall list the Government as an additional insured on said policy.

In addition to the insurance required above, Contractor agrees to procure and maintain ***professional liability insurance for any and all services performed under this Agreement, with a coverage limit of \$2,000,000 per claim.***

A. OTHER INSURANCE

The Contractor must obtain, pay for, and keep in force the following minimum insurance coverage and shall furnish a certificate to the Government evidencing that such insurance is in effect:

(1) Commercial general liability policy ("CGL") to insure contractual liability, personal injury, personal and advertising liability. Contractor will provide a waiver of subrogation for coverage afforded to the additional insured with respect to claims arising solely from Contractor's provision of services pursuant to the Agreement excluding the Government's negligence, willful misconduct or recklessness;

(2) Automobile Liability insurance coverage for owned, hired and non-owned vehicles has limits of liability of \$2,000,000 combined single limit per accident for bodily injury and property damage;

It shall be the responsibility of the Contractor to require any subcontractor to secure the same insurance coverage as prescribed herein for the Contractor, and to furnish to the Government a certificate or certificates evidencing that such insurance is in effect. Evidence of insurability under these provisions shall be directed to the Government. All such coverage shall remain in full force and effect during the Term.

The insurance specified above will be carried until all services required to be performed under the terms of this Agreement are completed. Failure to carry or keep

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such insurance in force will constitute a violation of the Agreement, and Government maintains the right to stop work until proper evidence of insurance is provided.

Contractor shall endeavor to provide at least thirty (30) calendar days prior written notice to Government in the event coverage is canceled, or non-renewed.

The parties hereto expressly understand and agree that any insurance coverage and limits furnished by Contractor will in no way expand or limit contractor's liabilities and responsibilities specified within the contract documents or by applicable law.

12. INDEPENDENT CONTRACTOR

The Contractor shall perform this Agreement as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status. The Contractor will act in an independent capacity and not as an officer or employee of the Government of the U. S. Virgin Islands.

13. DRUG FREE WORKPLACE ACT

The Contractor will assure a drug-free workplace in accordance with 2 CFR Part 382.

14. PRIVACY AND SECURITY STANDARDS

A. PROTECTED HEALTH INFORMATION

The Contractor shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this Agreement and in accordance with *Addendum III (Business Associate Agreement)*. The Contractor shall follow Federal laws relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act ("HIPAA") and regulations thereunder.

B. SUBSTANCE ABUSE TREATMENT INFORMATION

The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with Federal laws or regulations and specifically set out in 42 CFR Part 2.

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C. OTHER CONFIDENTIAL INFORMATION

The Contractor agrees to comply with the requirements of Government concerning access to Government confidential information as set forth in advance and in writing. The Contractor agrees to comply with any applicable territorial statute, and any applicable Medicaid confidentiality regulations, as well as the Business Associate Agreement in **Addendum III** that is incorporated into this Agreement. The Contractor shall ensure that all of its employees and subcontractors performing services under this Agreement understand the sensitive nature of the confidential information that they may have access to and Contractor shall require such employees and subcontractors to comply with the obligations hereunder regarding the information's confidential and non- public nature.

D. SOCIAL SECURITY NUMBERS

The Contractor agrees to comply with all applicable Federal and territorial statutes to assure protection and security of personal information, including protection from identity theft.

15. INTELLECTUAL PROPERTY WORK PRODUCT OWNERSHIP

All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this Agreement and used in the performance of this Agreement, including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically and exclusively for Government by Contractor under this Agreement, shall be considered "work for hire" and remain the property of the Government of the United States Virgin Islands, regardless of the state of completion, unless otherwise specified in this Agreement ("Work Product"). Such items shall be delivered to the Government upon 30 days' notice by the Government.

The Contractor shall not sell or copyright a Work Product without explicit permission from the Government and CMS.

Nothing herein shall entitle the Government to pre-existing Contractor's materials. Notwithstanding anything to the contrary in the Agreement, Contractor shall retain all patent, copyright and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience (collectively, "Intellectual Property") owned or possessed by Contractor before the commencement of, or acquired by Contractor during or after, the performance of the Services. Unless Contractor provides its prior written consent, Government will not use, or disclose to any third party, Contractor's advice or Intellectual Property other than as mutually contemplated by the parties when Contractor first was retained to provide such advice or Intellectual Property or as required by law.

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Except as expressly set forth herein, nothing in this Contract is intended or will be construed to confer upon or to give to any third party any rights or remedies by virtue hereof.

16. SECURITY AND DATA TRANSFERS

The Government of the U.S. Virgin Islands shall work with the Contractor to ensure compliance with all applicable territorial, CMS and DHS policies and standards, especially those related to privacy and security, as mutually agreed. The Government will advise the Contractor of any new policies, procedures, or protocols developed during the Term in writing as they are issued ("New Protocols") and will work with the Contractor to mutually implement any required changes to this Agreement, including amendments, to implement the same. However, Contractor is not obligated to comply with New Protocols to the extent (i) Contractor would incur any costs or (ii) any New Protocol is incompatible or inconsistent with Contractor's operational systems and framework or applicable laws. Contractor agrees that to the extent it is unable to comply with any aspect of the New Protocols, it shall notify the Government, and the parties shall work together to try to resolve such dispute expeditiously.

The Contractor will be responsible for the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. The Contractor will use commercially reasonable efforts to ensure that any media or mechanism used to store or transfer data to or from the territory includes industry standard security mechanisms such as continually up-to-date malware protection and encryption of portable devices and removable media. The Contractor will make reasonable efforts to ensure media or data files transferred to the territory are virus and spyware free. At the conclusion of this Agreement and after successful delivery of any and all data connected with this Agreement ("Data") to the Government, the Contractor shall securely delete data (including archival backups) from the Contractor's equipment that contains individually identifiable records, in accordance with standards adopted by the Government and its Department of Human Services. Notwithstanding anything to the contrary in this Agreement, but subject to Contractor's confidentiality obligations under this Agreement, Contractor may (i) retain copies of Confidential Information or Data that is required to be retained by law or regulation, (ii) retain copies of its work product that contain Confidential Information or Data for archival purposes or to defend its work product and (iii) in accordance with legal, disaster recovery and records retention requirements, store such copies and derivative works in an archival format (e.g. tape backups), which may not be returned or destroyed.

The Government has notified Contractor of its anti-virus and anti-malware software it intends to utilize on all devices that will access the Host system provided by West Virginia. Contractor further warrants that the software will operate in conformity with the terms and conditions of this contract from the date of delivery of the system and throughout the contract term(s).

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17. COMPUTING AND COMMUNICATION

The Contractor shall select, in consultation with the Government's Department of Human Services and the Bureau of Information Technology Office, one of the approved methods for secure access to the Government's systems and data, if required. Approved methods are based on the type of work performed by the Contractor as part of this Agreement. Options include, but are not limited to:

1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate Internet access. The Government's Department of Human Services' accounts may or may not be provided.
2. Government supplied and managed equipment and accounts to access DHS applications and data, including DHS issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology security and the HIPAA standards.

The Government will not supply e-mail accounts to the Contractor.

18. CONTRACT A PUBLIC RECORD

Upon the signing of this Agreement by all parties hereto, the terms of the Agreement become available to the public pursuant to Virgin Islands law, subject to the exceptions set forth in paragraph 19 below. The parties hereto agree to allow public access to all documents, papers, letters, or other materials subject to the current Virgin Islands law on disclosure. It is expressly understood that substantial evidence of Contractor's refusal to comply with this provision shall constitute a material breach of this Agreement.

19. PUBLIC INFORMATION

All information received that is the subject of this Agreement, including copyrighted material, is deemed public information and will be made available for public viewing and copying shortly after the signing of contracts. The sole exceptions to this are as follows: (1) trade secrets meeting the requirements of Federal Trade Secrets laws that have been properly marked, separated, and documented; (2) any Contractor financial information requested by Government to determine Contractor's responsibility; and (3) Contractor's confidential information, unless prior written consent has been given by the Contractor.

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20. INITIATION OF WORK UNDER THE CONTRACT

The Contractor acknowledges and understands that the Agreement is not effective until all requisite Government approvals are received, and the Contractor shall not begin performing work under this Agreement until notified to by Government's Department of Human Services that this Contract has been fully executed. ***The Contractor is entitled to no compensation for work performed prior to the effective date of this Agreement, unless said work has been specifically approved in writing by Government.***

21. CONTRACT AMENDMENTS

This Agreement shall be deemed to include all applicable provisions of the Virgin Islands Medicaid State Plan ("Plan") and all territorial and Federal laws and regulations applicable to the U. S. Virgin Islands Medicaid Program, as they may be amended. In the event of any substantial change in such Plan, laws, or regulations, which materially affect the operation of the Virgin Islands Medicaid Program, or the costs of administering such Program, either party, after written notice and before performance of any related work, may apply in writing to the other for an equitable adjustment in compensation or schedule caused by such material change.

Notwithstanding Section 9 of the Contract, the Contractor may assign this agreement to a third-party who (i) acquired all of the Contractor's MMIS business, (ii) is not federally debarred, (iii) agrees in writing to be bound by the provisions hereunder, (iv) the Host consents to the assignment, and (v) meets the approval of CMS for enhanced funding, provided Government is given no less than ninety (90) days notification, pursuant to the notice provisions in the Contract, of such assignment before it is effectuated.

22. CHANGES TO SCOPE OF SERVICES

During the Agreement period, if the Contractor considers that any written or oral communication, including any order, direction, instruction, interpretation, or determination, received from Government's Department of Human Services and its Medicaid agent or other duly authorized representative, or that any other act or omission of the Virgin Islands Medicaid Program, its agent or representative (an "Event") constitutes a change to the scope of the Scope of Services of this Agreement or otherwise adversely affects Contractor's performance of this Agreement, but is not plainly identified, labeled, or titled as such, the Contractor shall advise the designated Government's contact person with respect to the services to be provided by Contractor under this Agreement in writing within ten (10) business days of the Event and shall request written confirmation of the Event. The notice shall state the following:

- (1) The nature and pertinent circumstances of the communication, act, or omission regarded as a change in scope of the Scope of Services by the Contractor;

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- (2) The date of the communication, act, or omission, and the identification of each individual involved in such communication, act, or omission, listing his or her name and function;
- (3) The identification of the documents involved;
- (4) The substance of any oral communications;
- (5) The particular technical requirements or Agreement requirements regarded as changed;
- (6) The direct and foreseeable consequential effect of the communication, act, or omission regarded as a change to the scope of the Scope of Services, including the number of hours required from the staff to accomplish the change and the manner and sequence of performance or delivery of supplies or services, identifying which supplies or services are or shall be affected, and the effect on the overall schedule of performance of Contractor's work;

The Department of Human Services shall respond in writing within 10 days of receipt of the Contractor's notice.

23. ADDITIONS TO PERMANENT STAFF

Both the Contractor and the Government must agree upon additions to Key Personnel specified in *Addendum I (Scope of Services)*.

24. FORCE MAJEURE

Neither party to this contract shall be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include, but not be limited to, acts of God, strikes, riots, lockouts, and acts of war, epidemics, fire, earthquakes, hurricanes or other disasters.

25. SUBCONTRACTS

The Contractor may subcontract for any services necessary to the completion and duration of this Agreement and to the performance of its duties under this Agreement with advance written approval by the Government of both the subcontracted function and the subcontractor, which approval shall not be unreasonably withheld. Subcontractors include those whose services shall be purchased or software licensed by the Contractor, and any business partnerships between the Contractor and others and that are used by Contractor to provide the services under this Agreement.

Subcontractors shall demonstrate the capability to perform the function to be subcontracted. All subcontracts shall be in writing, with the subcontractor functions and duties clearly identified, and shall require the subcontractor to comply with all applicable

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provisions of this Agreement. The Contractor shall at all times remain responsible for the performance by any subcontractors approved by the Government. The Contractor's responsibility for damages shall apply whether performance or nonperformance was by the Contractor or one of its subcontractors. The Government shall not release the Contractor from any claims or defaults of this Agreement, which are predicated upon any action or inaction or default by any subcontractor of the Contractor, even if such subcontractor was approved by the Government as provided above. The Contractor shall give the Government notice in writing of any action or suit filed against it by any subcontractor retained to provide services hereunder and prompt notice of any claim made against the Contractor by any subcontractor, which in the opinion of the Contractor may result in litigation related in any way to this Agreement with the Government of the U. S. Virgin Islands.

26. TERMINATION

This Agreement may be terminated by Government for any and all of the following reasons:

- (1) In the event of the insolvency of or declaration of bankruptcy by the Contractor. The filing of a petition for voluntary or involuntary bankruptcy or a company or corporate reorganization pursuant to the Bankruptcy Act shall, at the option of the Government, constitute default by the Contractor effective the date of such filing; provided that an involuntary proceeding shall not constitute default if it is withdrawn or dismissed within **ninety (90) days** after filing. The Contractor shall inform the Government of any such action(s) immediately upon occurrence by the most expeditious means possible (e.g., telephone, fax, Federal Express, USPS mail, etc.).
- (2) For any default by the Contractor. The Government may, by written notice, terminate performance under this Agreement, in whole or in part, for failure of the Contractor to perform any of the material provisions of this Agreement. In the event the Contractor defaults in the performance of any of the Contractor's material duties and obligations, written notice shall be given to the Contractor specifying default.

The Contractor shall have 30 calendar days, or such additional time as agreed to in writing by the Government, after the receipt of such notice to cure any default. In the event the Contractor does not cure a default within 30 calendar days, or such additional time allowed by the Government, the Government at its option may notify the Contractor in writing that performance under this Agreement is terminated and proceed to seek appropriate relief from the Contractor. If it is determined, after notice of termination for default, that the Contractor's failure was due to causes beyond the control of and without error or negligence of the Contractor, the termination shall be deemed a termination for convenience.

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- (3) In the event sufficient appropriated, obligated funds from either territorial or Federal sources no longer exist for the payment of Government's obligation herein. Performance by the Government of any of its obligations under this Agreement is subject to and contingent upon the availability of territorial and Federal monies lawfully applicable for such purposes. If the Government reasonably deems at any time during the Term that adequate monies lawfully applicable to this Agreement shall not be available for the remainder of the Term, the Government shall promptly notify the Contractor to that effect, whereupon the obligations of the parties under this Agreement shall end as of the date of the receipt of such notice and this Agreement shall at such time be canceled without penalty to the Government of the U.S. Virgin Islands or the Federal Government.
- (4) For the convenience of Government. The Government may terminate performance of work under the Agreement in whole or in part whenever, for any reason, the Government, in its sole discretion determines that such termination is in the best interest of the Government upon thirty (30) days prior written notice to Contractor. In the event that the Government elects to terminate this Agreement pursuant to this provision, it shall so notify the Contractor by certified or registered mail, return receipt requested. The termination shall be effective as of the date specified in the notice. In such event, the Contractor will be entitled only to payment for all work satisfactorily completed and for reasonable costs incurred in good faith for work in progress; and the reasonable costs incurred as a result of the termination of the work, including but not limited to accounting, legal, clerical, and other expenses reasonably necessary for the termination if this Agreement.

Contractor shall have the right to terminate this Agreement upon one hundred and twenty (120) days prior written notice to the Government.

A. The Contractor's Duties Upon Expiration/Termination

Prior to the conclusion of this Agreement, the Contractor shall follow the procedure outlined below for termination. Contractor shall provide the completed and in-process deliverables to the Government or its agent at no additional charge. All unfinished work/deliverables will be provided on an "AS IS" basis without any warranties of any nature whatsoever and Contractor shall have no liability from the use of any such unfinished work/deliverables. The Government desires a low-risk turnover that is transparent. Specific objectives are to provide for an orderly, complete, and controlled transition to a successor Contractor and to minimize any disruption of processing and services provided.

The Contractor must:

- (1) Stop work under this Agreement on the date and to the extent specified in the notice of termination.

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- (2) Place no further orders or subcontracts for materials or services, except as may be necessary for completion of such portion of work under this Agreement as is not terminated.
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination.
- (4) Assign to the Government, in the manner and to the extent directed by the Government, all of the rights, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle, pay, or deny any or all claims arising out of the termination of such orders and subcontracts.
- (5) With the prior approval or ratification of the Government, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Agreement. Failure to obtain prior approval shall result in loss of the Agreement reimbursement.
- (6) Complete the performance of such part of the work as shall not have been terminated by the notice of termination.
- (7) Take such action as shall be necessary, or as the Government shall direct, for the protection and preservation of any and all property or information related to these contracts which is in the possession of the Contractor and in which the Government has or shall acquire an interest. Upon receipt of notice of termination, Contractor must have no entitlement to receive any amount for lost revenues or anticipated profits or for expenditures associated with this or in any other contract. Contractor shall be paid only by the following upon termination:
 - (a) at the contract price(s) for completed deliverables and services delivered to and accepted by Government;
 - (b) the reasonable costs incurred as a result of the termination of the work, including but not limited to accounting, legal, clerical, and other expenses reasonably necessary for the termination if this Agreement; and
 - (c) at a price mutually agreed upon by the Contractor and Government for partially completed deliverables.

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27. NONDISCRIMINATION COMPLIANCE

The Contractor shall comply with Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Order No. 11246, as amended by Executive Order No. 11375, both issued by the President of the United States, the Americans with Disabilities Act of 1990, and with all applicable Federal and territorial laws, rules and regulations implementing the foregoing statutes with respect to nondiscrimination in employment. The Contractor shall not discriminate against any employee or applicant for employment because of a physical or mental disability in regard to any position for which the employee or applicant is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled individuals without discrimination based on their physical or mental disability in all employment practices.

28. SMALL BUSINESS, MINORITY-OWNED FIRMS, AND WOMAN'S BUSINESS ENTERPRISES UTILIZATION

In accordance with the provisions of 45 CFR Part 75 and the Federal Office of Management and Budget Circular A-102, affirmative steps shall be taken to assure that small businesses, minority-owned firms and women's business enterprises are utilized when possible as sources of supplies, equipment, construction, and services.

29. WORKER'S COMPENSATION

The Contractor must take out and maintain during the Term, worker's compensation insurance for all of its employees working as part of this Agreement; and, in the event any work is subcontracted, the Contractor must require any subcontractor similarly to provide worker's compensation insurance for all the latter's employees working as a part of this Agreement.

30. LOBBYING

No Federal funds under this Agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendments other than Federal appropriated funds.

31. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term, condition or provision of this Agreement, including its Addenda, shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any

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of the terms, conditions or provisions of this Agreement, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writings or writings.

32. HEADINGS AND TITLES AND SEVERABILITY

Any headings or titles used to help identify any part of this Agreement are for reference purposes only and shall not be deemed as controlling the interpretation or meaning of any provision of this Agreement. If any term or any word, phrase, clause or sentence in this Contract is declared by a court having jurisdiction to be illegal or unenforceable, such word, phrase, clause or sentence shall be modified, deleted or interpreted in such a manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Agreement as modified, enforceable and the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Contract did not contain that term.

If any provision of this Agreement or the application therefore to any Party of circumstances shall be declared void, illegal or unenforceable, the remainder of this Contract shall be valid and enforceable to the extent permitted by law.

33. ENTIRE AGREEMENT

This Agreement, including all Addenda, constitutes the entire agreement between the parties hereto. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

34. RIGHT TO WITHHOLD

If work under this Agreement is not performed in accordance with the terms hereof, including any Addenda hereto, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may reasonably deem ample to protect it against loss or to assure payment of claims arising there from, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims; provided that in no event shall such withholding exceed five (5%) percent of the amount invoiced for the deliverable to which such withholding relates. The Government may withhold funds for DDI milestones to the extent that such milestones are delayed. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by the Government if and while the Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

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35. GOVERNMENT

In the event that Molina is delayed from completing its work due to delays caused by the Government, Molina shall be excused from late performance by an amount of time no less than such delay. The Government acknowledges that substantial delays caused by it may require that Molina reassign personnel to other projects, potentially delaying in the project further. Molina shall not be responsible for such delays.

36. CONFLICT OF INTEREST

It is Contractor's practice to serve multiple clients within industries, including those with potentially opposing interests. Accordingly, Contractor may have served, may currently be serving or may in the future serve other clients whose interests may be adverse to those of the Government. In all such situations, Contractor is committed to maintaining the confidentiality of each client's information and will abide by non-disclosure procedures (such as firewall protocols and other safeguards) to ensure that all confidences are protected.

Contractor and its affiliates serve a wide array of clients, including clients who compete with or whose interests may be adverse to one another. In addition, Contractor interacts with insurance carriers and other service providers through numerous business and contractual relationships, including serving as a broker for its clients and receiving commissions from carriers, providing consulting or administration services to carriers, and auditing carriers' claims data. Contractor is committed to serving each of its clients in an objective manner and maintaining the confidentiality of each of its client's information.

To its actual knowledge, Contractor's Government Human Services Consulting Group further covenants that it is:

- (1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or
- (2) a territorial officer or employee and as such, has familiarized itself with the provisions of Title 3, Chapter 37, Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in Section 1108 thereof; and not made, negotiated or influenced this Agreement, in its official capacity; and no financial interest in the Agreement as that term is defined in Section 1101, (1) of said Code Chapter.

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37. NO GIFTS OR GRATUITIES

Contractor shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the Government during the Term.

38. ALTERNATIVE DISPUTE RESOLUTION

Government does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. Government does not waive any right to a jury trial. Any claim, action or proceeding hereunder will be heard in the U.S.V.I.

39. NOTICE

Any notice required to be given by the Terms of this Agreement shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT:

Commissioner
Government of the Virgin Islands
Department of Human Services
1303 Hospital Ground
St. Thomas, U.S.V.I. 00802
Telephone: (340) 774-1166
Fax: (340) 774-3466

Copy to: Commissioner
Department of Property & Procurement
Sub Base, Building No. 1, Third Floor
St. Thomas, U.S. Virgin Islands 00802
Telephone: (340) 774-0828
Fax: (340) 777-9587

CONTRACTOR:

Molina Information Systems, LLC
200 Oceangate, Suite 100
Long Beach, California 90802
Telephone: (562) 435-3666
Facsimile:
Attention: William Dixon
Email: william.dixon@molinahealthcare.com

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Norman Nichols

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40. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Agreement, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such false, fictitious, or fraudulent claim is a crime under Virgin Islands and Federal laws.

41. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that this Agreement is funded, in whole or in part, by Federal funds. Contractor warrants that it shall not, with respect to this Agreement, make or present any claim knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a Federal offense.

Both parties acknowledge and agree that should Government funding be limited or restricted, it may affect funding for the Contractor. It is agreed that in the event funding is reduced or restricted, Government shall immediately notify Contractor. In this event, Government will only be obligated to reimburse Contractor for costs already incurred and obligated for payment up to the date of termination by Government. In the event that funds are restricted, Government and Contractor shall negotiate a new scope of services should the Contractor desire to perform the services required by the reduce level of effort.

42. DEBARMENT CERTIFICATION

By execution of this Agreement, the contractor certifies that it is eligible to receive awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any Federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall require each proposed subcontractor to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government. In the event the Contractor or subcontractor misrepresents its eligibility to receive contract awards using Federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this Agreement or subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

If, during the Term, the Contractor shall become ineligible to receive contract awards using Federal funds, this Agreement shall be terminated forthwith for cause and the Contractor shall not be entitled to payment for any work performed under this Agreement or sub-contract after the effective date of such ineligibility.

Contractor represents that none of its personnel providing the services under this Agreement have been excluded from participating in Medicare, Medicaid, or other

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Federal health care programs. The Contractor shall notify the Government immediately in the event that it learns that either the Contractor or any of its personnel becomes ineligible to participate in Medicare, Medicaid, or any other Federal health care program during the Term. If any personnel are excluded from participating in Medicare, Medicaid, or any other Federal health care program, the Contractor shall immediately replace such personnel. If The Contractor is excluded from participating in Medicare, Medicaid, or any other Federal health care program, this Agreement shall terminate automatically effective as of the date of such exclusion.

43. PUBLICITY

No publicity, including press releases, interviews, bulletins, or articles in any public medium concerning this Agreement, its terms, execution, implementation, or results, can be released without the written approval of the Government and Contractor.

44. OTHER PROVISIONS

Addendum I, Scope of Services; Addendum II, Compensation; and Addendum III; Business Associate Agreement, attached hereto are hereby incorporated and made a part of this Agreement. In the event of a conflict between the terms and conditions of the general provisions of this Agreement and the terms and provisions of any Addendum to this Agreement, the terms and conditions of such Addendum shall prevail with respect to personal health information.

45. CONFIDENTIALITY

- (a) Each party to this Agreement (the "Disclosing Party") is likely to disclose information to the other party from time to time in the course of the provision of the Services, which is marked or designated as confidential or proprietary at or prior to disclosure or which would appear to a reasonably prudent person to be confidential and/or proprietary in nature ("Confidential Information"). For purposes of clarification, "Confidential Information" shall include, without limitation, all information regarding the pricing of Services to be provided by Contractor and its affiliates and the Intellectual Property. The party receiving the Confidential Information (the "Receiving Party") will not divulge or communicate it to any person other than in connection with the provision of the Services or as otherwise provided for in this Agreement. This restriction does not apply to information which (i) the Receiving Party must by law or legal process disclose, (ii) is either already in the public domain or enters the public domain through no fault of the Receiving Party, (iii) is available to the Receiving Party from a third party who, to the Receiving Party's knowledge, is not under any non-disclosure obligation to the Disclosing Party, or (iv) is independently developed by the Receiving Party without reference to any Confidential Information of the Disclosing Party.

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- (b) Government also agrees that, notwithstanding any other provision in this Agreement, Contractor may include the identities of those persons who are identified by Government as contact persons for Government and information about the terms of this Agreement, the Services and the compensation in Contractor's internal client management, financial and conflict checking databases.

46. PROVISION OF INFORMATION AND ASSISTANCE

The Government will provide all necessary and reasonably requested information, direction and cooperation to enable Contractor to provide the Services, and any direction (whether verbal or written) shall be effective if contained expressly in the Scope of Services or if received (whether verbally or in writing) from a person known to Contractor or reasonably believed by Contractor to be authorized to act on the Government's behalf. Contractor shall be permitted to use all information and data supplied by or on behalf of the Government without having independently verified the accuracy or completeness of it except to the extent required by generally accepted professional standards and practices. If any documentation or information supplied to Contractor at any time is incomplete, inaccurate or not up-to-date, or its provision is unreasonably delayed, then Contractor shall not be responsible for any delays or liability arising therefrom. In the event that it is necessary or appropriate to perform any additional work as a result, Contractor will obtain the Government's prior approval before commencing such additional work; provided that if the Government does not provide such prior approval, Contractor shall not be obligated to perform such additional work and Contractor shall have no liability for the Services to the extent any loss arises from or is related to the failure to perform such additional work.

47. DEFINITIONS OF TRANSACTIONS AND CLAIMS

For the purpose of pricing the US Virgin Islands *Medicare Medical Information System* ("MMIS") system proposed in the *Implementation Advance Planning Document* ("IAPD") document and memorialized in the contract between the USVI and Molina, a "transaction" shall include all Medicaid claims that are accepted into the MMIS that are either:

- Paid
- Denied, or
- Suspended

Claims that do not meet the minimum requirements for acceptance into the MMIS for processing and are returned to the provider will not be counted as transactions. Paid claim adjustments to previously processed claims will not be counted as transactions.

For the purpose of this definition, the term "claim" shall refer to the UB-04 Claims (hospital inpatient, outpatient, and nursing facility) or the CMS 1500 professional provider claim forms that receive an Internal Control Number (ICM). While each claim form that receives an ICN may have multiple lines for multiple services, each ICN shall represent one (1) transaction.

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IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year above written. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and all Ancillary Documents may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

CONTRACTOR:

MOLINA INFORMATION SYSTEMS, LLC
d/b/a MOLINA MEDICAID SOLUTIONS

WITNESSES:

[Signature] 08/30/16
Date

[Signature]

DocuSigned by:

Norman Nichols

By:

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Norman Nichols, President

WITNESSES:

[Signature] Date 8/31/16

[Signature]

[Signature] Date 8/31/16
[Signature]

GOVERNMENT OF THE U. S. VIRGIN ISLANDS

[Signature]

Dr. Anita Roberts
Commissioner Designee
DEPARTMENT OF HUMAN SERVICES

[Signature]
Randolph Bennett
Commissioner
DEPARTMENT OF PROPERTY & PROCUREMENT

APPROVED:

[Signature]
KENNETH E. MAPP
Governor of the U.S. Virgin Islands

Date 08-31-16

APPROVED AS TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE

By: *[Signature]*
Claude Walker, Esq.
Attorney General of the U. S. Virgin Islands

Date 8/31/16

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